

McLane Mid-Atlantic, Inc. and Teamsters, Drivers, Chauffeurs Local Union 639, a/w International Brotherhood of Teamsters, AFL-CIO, Petitioner. Case 5-RC-13999

February 14, 1995

DECISION AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

The National Labor Relations Board, by a three-member panel, has considered objections to an election held April 21, 1994, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Decision and Direction of Election. The tally of ballots shows 233 for and 293 against the Petitioner, with 24 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings and recommendations, and finds that the election must be set aside and a new election held.¹

For the following reasons, we agree with the hearing officer's finding that the Petitioner's objections were timely filed. It is undisputed that the Petitioner mailed

¹ In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to overrule Objections 2-4 and 6.

Member Stephens relies solely on Objection 1 in finding that the election should be set aside, and he finds it unnecessary to pass on Objection 5.

the objections on April 26, 1994, 2 days before the filing due date. Under the "postmark" rule, objections are timely filed if postmarked at least 1 day before the due date. *John I. Haas, Inc.*, 301 NLRB 300 (1991). Therefore, we conclude that the Petitioner's objections were timely filed under *Haas*.

We find no merit in the Employer's contention that the "postmark" rule does not apply in circumstances where, as here, the original objections never arrive in the Regional Office and instead a duplicate of the original objections are received. First, the Employer cites no cases supporting this proposition. Second, the Employer's position is contrary to one of the underlying reasons for the application of the "postmark" rule: protecting the interests of an objecting party acting in good faith and with all due diligence. See *Haas*, supra.

In addition, we do not agree with the hearing officer's conclusion that the facts of this case do not fall squarely within the "postmark" rule because this is not a case where the delay was caused by the Postal Service or a delivery service. It is undisputed that the Petitioner's objections were postmarked at least the day before they were due, and were not delivered in a timely manner due to circumstances that were totally beyond the Petitioner's control. In these circumstances, we conclude that the "postmark" rule applies, and the objections were timely.

The Chairman would affirm the hearing officer.

[Direction of Second Election omitted from publication.]